

HAWAII CONDOMINIUM



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Pets in Condominiums

The Hawaiian Humane Society has launched a program called "Pets in Housing." Among other things, the program helps condominiums and cooperatives design customized pro-pet policies. The program also seeks to challenge the attitude that condominiums and coops are unsuitable settings for animals. Program objectives are four-fold: to open up more homes to responsible pet owners, to reduce the number of animals that are brought to the Humane Society, to open up to a greater number of people the joy of pet ownership, and to establish and maintain the Pet Directory (a unique resource for locating "pet permitted" condominiums, and cooperatives).

To achieve these objectives, the Humane Society provides interested condominium owners and cooperatives with resources and support for developing comprehensive and effective pro pet policies. In January 1994, the Society hopes to have the "Pets in Housing" materials available for condominiums, cooperatives, and owners. The

CONGRATULATIONS to the following associations for being the first to register for 1994: Gregg Apartments; Leinani Apartments; Maunauluan; Namahana Terrace; Wailea Point Village; Golf Villas; Kalama Gardens; Wailuku Townhouse; Kalepa Business Center; and Ewa Beach Townhouse.

materials provide a framework for regulating pets and living happily with them. The package of information contains:

- ✓ A pet registration and application form;
- ✓ Pet Addendum to Lease Agreement;
- ✓ Recommended House Rules;
- ✓ Tips for Tenants;
- ✓ A checklist for landlords.

These forms may be used by associations in dealing with the keeping of pets on the condominium premises. *However, condominium associations, managing agents, and owners should always first check whether the condominium bylaws and declarations permit pets and under what circumstances. Each association should also seek the advice of its attorney should there be any questions about the applicability of the materials to their condominium project.*

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Letter from the Vice Chair. . .

Dear Condominium Owners,

At the beginning of this new year, many of you may have made resolutions—perhaps, as was suggested in the last issue, to attend a condominium management education seminar. One such seminar is being presented on the Big Island especially for condominium owners, board of directors, or condominium managing agents there. This February 19th seminar was rescheduled from December due to lack of sufficient registration. We hope to see you there.

In addition, an educational calendar with events of interest to condominium owners will be a new regular feature of the Hawaii Condominium Bulletin.

To provide you timely information about these and other matters, this issue of the Hawaii Condominium Bulletin is being mailed out early in the year, shortly after the annual deadline for condominium association registration.

Other suggestions for 1994 resolutions:

- Be a good homeowner (read the declaration, bylaws and house rules, serve as a director, remember that as an association member, what's good for the association is good for you);
- Be a good neighbor (respect your neighbor, if you have a problem, talk about it—dialogue or mediation are more effective than letter writing or wall banging);
- Be a good board member (before you enforce them, carefully study the declaration, bylaws and house rules, keep your emphasis on policies rather than specific decisions, on plans rather than execution, and on objectives rather than details).

To ensure accurate delivery of the Hawaii Condominium Bulletin, each association is encouraged to register as early as possible so that copies may be sent to the contact persons designated by that association.

Please feel free to write to or call (586-2646 or from the Neighbor Islands, 1 800 468-4644, extension 6-2646) the Commission's condominium specialists. From all of us, Happy New Year.

Very truly yours,

Carol Mon Lee,
Vice Chair, Condominium and
Cooperative Review Committee

Ask the Condominium Specialists

Q. I heard that as an condominium apartment owner, I may be held liable if someone is injured while on the common elements. Is this true?

A. Yes. As an owner of a condominium apartment, you are a co-owner of the common elements. As a property owner, you may owe a duty to persons entering the property, even if it is held in common with the other owners or managed by the association. (Of course, you are also a member of the condominium association).

Both owners and association boards should be aware of this risk, seek legal advice for risk reduction, and consult with an experienced insurance agent.

Q. I understand a new law is now in effect that requires associations to set aside reserves. How much money is required?

A. Reserves are funds set aside for future expenses, in this case, major capital repairs or replacements relating to the common elements. There is no specific amount which would apply to all condominium associations. Instead each association's board must conduct a reserve study (or component study) which includes a schedule of major repairs with estimates of the dollar cost and the time frame. Using the results of the component study, a funding study is prepared to determine how much money to set aside each year. For further information, please consult the Condominium Reserves Reference Manual, available from the Hawaii Real Estate Research and Education Center, telephone 956-7892 or from the Neighbor Islands, 1-800-642-4756.

Summary of Condominium Programs

Fiscal Year 1993-94

This article is excerpted and adapted from a report prepared for the Legislature by the Hawaii Real Estate Commission on the condominium property regime and the Condominium Management Education Fund.

Programs which are designated "Continuous" are continuing and permanent. Programs which are designated as "Carryover" are discrete tasks which, due to their complexity, require more than one year to execute.

☐ Condominium and Cooperative Review Committee

Continuous program. This is a Commission Standing Committee that holds a monthly public meeting in which condominium and cooperative issues are discussed.

Commissioners Stanley Kuriyama and Carol Mon Lee serve respectively as the Chair and Vice-Chair of this Committee. The Supervising Executive Secretary is the administrator of this Committee, assisted by the three Condominium Specialists.

This is a working committee that handles "nuts and bolts" issues. Participants include apartment owners, board of directors, condominium managing agents, Legislators, developers, attorneys, educators, researchers, government officials, and others.

This Committee holds at least one meeting a year at a neighbor island site. This fiscal year, the neighbor island meeting was held on Kauai, during September 1993.

The Committee conducts a biennial condominium community symposium on the program of work and budget. At the symposium, the Committee exchanges concerns with those in the condominium community about condominium concerns, education programs, research programs, and legislative matters.

☐ Five-Year Education and Research Plan

Carryover program. This program consists of implementation and administration of a five-year condominium education and research plan that includes such areas as governance, management, board administration, dispute resolution, budget and accounting, reserves, new project registration and public reports.

This program also includes research, exchange, and development of a rollover fifth year on the five year education and research plan.

☐ Condominium Association Budget and Reserves

Carryover program. This program's objective is to develop a plan for the implementation of and education about the new budget and reserves law, analysis of the new law and initiation of development of administrative rules. The administrative rules were placed into the formal rule making process as of November 1992.

Another objective is to present staff or commissioner orientation briefings on the neighbor islands and Oahu.

Another objective is to continue distribution of one copy each of a condominium association budget and reserves guide at no cost to each registered condominium association and condominium managing agent, with the sale of additional copies at cost. The manual was co-produced with the Hawaii Real Estate Research and Education Center (HREREC) as of October 1992. Possible amendments will also be reviewed and developed.

A final objective is to plan, develop, and initiate workshops on budget and reserves, utilizing the guide for the board of directors, condominium managing agents, association employees, and apartment owners for a nominal fee. Initial workshops have been completed on Oahu, Maui, Kauai and Hawaii County as of December 1993 in co-production with the Hawaii Real Estate Research and Education Center (HREREC). The situation will be evaluated and with justified demand, additional workshops will be considered.

☐ Condominium Board of Directors Guide

Carryover program. This program's objective is to develop a guide for condominium board of directors as a reference guide to management of a condominium association.

The guide will be comprised of "stand alone brochures" on various subject matters, non-stand alone subject matters, index, etc. (To utilize existing material with permission, not "reinvent the wheel" concept. Ability to be amended easily, placed in a three ring binder, reproducible stock, and produced at a reasonable cost).

The curriculum to be developed through outreach so the developed curriculum determines the content of the guide.

The completed curriculum and "stand alone brochures" to be also utilized for topics for commission condominium seminars, articles in Hawaii Condominium Bulletin.

This fiscal year would include completion of more brochures, the non-stand alone areas, index, compilation and production of guides for distribution by end of fiscal year. One guide distributed per registered association, condominium managing agent, library, new AOAO, and new CMA, 2,000 printing.

Among others, sections to include fiduciary duties, proxies, dispute resolution, "welcome to the board", declaration/bylaws/house rules, fair housing as it applies to condos, etc.

☐ **Legislative Program**

Continuous program. 1993 Legislative Acts and Resolutions. This program consists of work necessary to review and carry out the responsibilities of 1993 Legislative acts and resolutions and provide a summary of condominium and related acts and resolutions for the Real Estate Commission staff, Hawaii Condominium Bulletin, etc.

This program also includes amendments to the public copy of Chapter 514A, and Hawaii Revised Statutes, and working with ASO for its publication.

Report to and participation with the 1994 Legislature. This program consists of steps necessary to research, develop, print, and distribute the annual report to the Legislature on condominium management education fund, program or work, and budget.

This program also includes work with Administration, provide briefings to Legislators and staff, act as resource, researching and drafting legislative bills/committee reports, submit testimony, present oral testimony, and bill tracking.

☐ **Rule Making, Chapter 107, Hawaii Administrative Rules**

Carryover program. This program consists of formal rule making process for budgets and reserves.

Continuous program. This program consists of rule making for condominium management and governance continued review, rule making, REC decisions to rule making, etc.

It includes informal briefings on Oahu and neighbor islands by staff and/or a Commissioner.

It also includes administration of the formal rule making process and timetable.

☐ **Rule Making, Chapter 53, Hawaii Administrative Rules, Fees**

Continuous program. This program consists of review and monitoring, services in relation to fees, research/study, make recommendations, develop drafts, assist in formal rule making process including public hearing, etc.

☐ **Condominium Mediation Program**

Continuous program. This program consists of condominium governance mediation. Will continue the program with Neighborhood Justice Center and Mediation Services of Maui through condominium mediation subsidy program and training.

Another objective is to study feasibility of initiating program in other neighbor islands and training of mediators, briefings/training/monitoring of mediators on Oahu and Neighbor Islands.

This program also includes development and collection of statistical data for education purposes.

☐ **Condominium Arbitration Program**

Carryover program. This program also includes providing information, advice, and referral concerning condominium arbitration.

☐ **Interactive Participation with Organizations**

Continuous program. This program consists of active participation with Hawaii, national, international, and Pacific Rim organizations and government agencies for the exchange of information and concerns, sharing of educational and research efforts, joint projects of mutual concern, training, etc. through attendance, membership, and participation at local, regional, national, and international meetings.

Organizations include: Community Associations Institute, Blue Ribbon Panel, Hawaii Council of Associations of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, South Maui Condominium Council, Institute of Real Estate Management, National Association of Real Estate License Law Officials, Hawaii State Bar Association, etc.

☐ **Condominium Seminars**

Continuous program. This program consists of utilizing the curriculum and brochures developed for the board of directors guide, association budget and reserves guide, new rules, legislative update, or condominium topics of mutual concern. Seminars to be held in all counties and to include seminars produced by third party organization. Videotaping to be considered.

Another objective is to continue administration of policy on subsidizing, sponsoring, assisting, cosponsoring, seminars by third party organizations.

☐ **Cooperative Education, Research, and Administrative Program**

Continuous program. This program consists of active participation in and sponsorship of cooperative education, research, and administrative programs for Departments, Divisions, or Branches, who provide direct or indirect services to or for the Commission.

☐ **Condominium Speaker Program**

Continuous program. Subject to approval and priorities. This program consists of honoring requests by associations, condominium management agents, interested groups, college/universities, legislators, government agency, etc. for participation in a program as a speaker or resource concerning condominium issues. The participant can be either a Condominium Specialist, Executive Secretary, or Commissioner.

☐ **Condominium Specialists "Office for the Day"**

Continuous program. This program consists of the condominium specialists setting up an office at various neighbor island locations to meet and discuss condominium concerns with advance publicity. (Maximum of six visits.)

☐ **Advice, Education, and Referral**

Continuous program. This program consists of providing advice, education, and referrals to the condominium community, consumers, licensees, government officials, etc.; including research, reproduction, mailing, etc.

Another objective is to print and distribute a copy of Chapter 514A Hawaii Revised Statute and its Rules to each registered association and registered condominium managing agent.

Another objective is to administer and provide requestors access to review public information and records as well as requests for copies and to work with Office of Information Practices.

☐ **Hawaii Condominium Bulletin**

Continuous program. This program's objective is the development, writing, editing, low cost printing, and distribution of quarterly newsletter to condominium board of directors, condominium managing agents, and associations. Articles to include material previously developed by Real Estate Commission or Center.

This program will provide 6 copies to each Association of Apartment Owners.

☐ **Media Education Articles**

Carryover program. This program's objective is to study feasibility of developing a weekly or biweekly newspaper column on condominium issues, patterned after "On Real Estate"

The column would utilize existing condominium materials developed by Real Estate Commission and Hawaii Real Estate Research and Education Center, including budget and reserves guide, board of directors guide, legislative update, laws and rules, seminar materials, etc.

It could replace the Hawaii Condominium Bulletin, in the long run, as it reaches more for less cost printing and distribution

☐ **Condominium Survey**

New program. This program's objective is to survey a cross section of condominium board of directors, apartment owners, condominium managing agents, and condominium employees to get insight into the needs, problems, education concerns, Real Estate Commission programs, to be used for the education and research programs.

☐ **HREREC Interaction Program**

Continuous program. This program's objective is to foster interaction with state, national, and international organizations and government agencies for information exchange.

This program also includes co-participating with Real Estate Commission at neighbor island meetings.

☐ **Condominium Reference Library**

Carryover program. This program's objective is to distribute a condominium reference library to public libraries, Real Estate Commission office, mediation services offices, and possibly institutions of higher learning especially on the neighbor islands stocked with purchase of reference materials, Real Estate Commission and Hawaii Real Estate Research and Education Center materials.

☐ **Condominium Association Registration**

Continuous program. This program includes work necessary to review and monitor program for improvement or problem areas, development of 1994 registration form and its distribution and records administration.

This program also includes study and consideration of contracting with a consultant to locate unregistered associations and/or visitations to locate unregistered associations and/or contact person.

This program will also administer tracking of fidelity bond expiration dates and monitor and collect all dates on fidelity bond concerns and problems.

☐ **Condominium Managing Agents Registration**

Continuous program. This program's objectives include review and monitor program for improvement or problem areas with Licensing Branch, develop 1994 registration procedures, forms, instructions, deadline dates, deficiencies, enforcement, etc.; and distribution of registration forms.

This program will also administer tracking of fidelity bond expiration dates and monitor and collect all data on fidelity bond concerns and problems.

☐ **Meetings and Symposium**

Continuous program. This program includes tasks necessary to plan, coordinate, and conduct monthly Condominium and Cooperative Review Committee Meetings. (including arrangement for facilities, agenda, testifiers, and minutes)

This program also includes work necessary to plan, coordinate, and conduct biennial symposium and any mid-biennium symposium on program of work and budget.

☐ **Neighbor Islands Outreach**

Continuous program. The objective of this program is to hold Condominium and Cooperative Review Committee meeting at neighbor island site with Education Review Committee and Law and Rules Review Committee. County of Kauai is the site for 1993-1994. (Meetings were held in September 1993.)

☐ **Condominium Management and Education Fund (CMEF)**

Continuous program. This program consists of tasks necessary to accomplish maintenance and review of budget, finance, and records for the Condominium Management Education Fund (CMEF); preparation of monthly and annual financial statements; preparation of annual budgets; and administration of fund investment.

This program also includes the planning and initiating of biennial audit of fund through Department of Accounting and General Services including contract drafting and administration and work with auditors on review.

☐ **Start-up Kit for New Associations of Apartment Owners**

New program. The objective of this program is to research, develop, print, and distribute start-up kit for new condominium Association of Apartment Owners.

This program will also include copy of Chapter 514A, its rules, budget and reserves guide, board of director guide or brochures, past condominium bulletins, etc.

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To help with the issue of housing pets, the Hawaiian Humane Society surveyed condominiums and coops about the associations' pet policies. The survey was started in August 1993. The survey results are being used to create a pet directory. The directory assists pet owners and potential pet owners with finding suitable housing for themselves. It contains, amongst other

information, details of for example, what types of pets are permitted, size, weight, number, prior board approvals required or not, insurance requirements etc..

For further information about "Pets In Housing," interested persons should write or call the Hawaiian Humane Society at 955-5122.

Report on the Continuing Controversy About IRS Audits of Association of Apartment Owners' Reserve Funds

During the summer of 1993, several homeowners' associations in San Diego, California were audited by the Internal Revenue Service, seeking adjustments to the amount of income tax owing by the associations. These developments may impact condominium associations in Hawaii. The IRS office in San Diego has apparently taken the position that improperly handled reserve funds can be considered income to condominium associations and be taxed accordingly. Recently, the IRS national office has taken charge of the audits. Apparently a condominium association may have a choice of two income tax filing procedures. It may file its income tax return using form 1120H, an income tax return for homeowners associations, or form 1120, a regular corporate tax return. Many associations have chosen to use form 1120 because of the lower tax rates. However, many more detailed and complex procedures must be complied with when associations elect form 1120. Many, if not all, of the San Diego associations used form 1120.

The controversy over the tax treatment of reserve funds continues to date. The Community Association Institute (CAI), a national organization involved with condominium management and governance issues, has been asked to develop a position paper to effect positive changes in the federal tax laws in connection with condominium reserves.¹ The Hawaii IRS office also requesting guidance from the IRS national office.

Accountants who belong to the Community Associations Institute have suggested that the strict requirements for using form 1120H be simplified and be made less complex. Some of the accountants believe the requested changes would correct the gross inequities, unintended results, and eliminate the confusion generated by the two filing options.

Associations should continue to watch for developments in this area and seek the advice of the association's CPA.

¹ The proposal involves four issues:

- (a) Elimination of the residential requirements of Internal Revenue Code Section 528;
- (b) Elimination of the 60 percent gross revenue test of Code Section 528;
- (c) Elimination of the 90 percent expenditure test of Code Section 528;

The above changes would allow all associations to file form 1120-H without having to go through the process of meeting these stringent qualifications.

- (d) Elimination of the flat 30 percent tax rate of Code Section 528 and replace it with the graduated tax rate table applicable to corporations under Form 1120.

Porter, Gary A., CPA, *The Ledger Quarterly*, Volume 5, Number 1, Summer 1993, page 2.

"Fiduciary Duty"

This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at 586-2644 to submit your request.

Additional Topic — "Proxies"

Saturday, February 26, 1994 — 9:00 a.m. – 12:00 p.m.

No Cost (Limited seating – registration recommended)

Keoni Auditorium, East-West Center, University of Hawaii Manoa Campus

A Seminar for Condominium Board Members, Owners and Condominium Managing Agents designed to:

- give board members a working knowledge of the fiduciary responsibilities, promises, and obligations they assume upon taking office and provide suggestions for carrying them out;
- give condominium apartment owners information about what owners can expect board members to do as fiduciaries;
- give condominium managing agents information about what they can expect board members to do as fiduciaries.

For further information and/or registration, please call the
Hawaii Real Estate Research & Education Center
at 956-7892 (1-800-642-4756, toll-free from Neighbor Islands)

Sponsored by the Hawaii Real Estate Research and Education Center,
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Education Calendar

This listing reports the availability of some condominium governance related events. The Hawaii Real Estate Commission and the Hawaii Real Estate Research and Education Center **express no opinion** about the quality or content of any event which they do not sponsor; neither should the listing be construed as an endorsement or sponsorship of any event by the Hawaii Real Estate Commission or the Hawaii Real Estate Research and Education Center, unless expressly indicated. Interested parties are advised to conduct their own investigation and formulate their own opinion about these matters. Participants are advised that courses are subject to change, please check directly with the provider about the specifics of a particular event.

Date	Time	Course Title	Location	Provider
01/15/94	9:30 a.m.	Condominium Landscape and Grounds — Getting the Most for Our Money	Kihei School, Maui	SMCC
02/9-11/94	—	Asset Protection	—	CAI
02/11/94	2:00 p.m.	Mediation — A Better Way of Solving Small Problems and Preventing Big Ones	Cameron Center, Wailuku, Maui	SMCC
02/12/94	—	The Dos and Taboos of Running an Annual Meeting (Course #M-140)	Hale Koa Hotel, Oahu	CAI
02/19/94	—	Association Law & Management From "A - Z"	Kona Surf Resort (Big Island)	CAI
02/26/94	9:00 a.m.	Fiduciary Duty	East West Center, UH Manoa	HREREC
03/5-11/94	8:00 a.m.	Marketing and Management of Residential Property (Course #301)	Outrigger East Hotel, Oahu	IREM
04/19/94	6:00 p.m.	Purchase, Ownership & Management of Condominiums (Course #L9869)	University of Hawaii (Manoa)	UH-SBMP
04/22-5/1	8:00 a.m.	Successful Site Management (Course #101)	Iolani Court Plaza, Oahu	IREM

For full information for the above-listed courses, please call the Provider

Provider	Phone	Address
CAI — Community Associations Institute Hawaii Chapter	531-6836 (Oahu)	P.O. Box 976, Honolulu, HI 96808
HREREC — Hawaii Real Estate Research & Education Center	956-7892 (Oahu)	2404 Maile Way B-201, Honolulu, HI 96822
IREM — Institute of Real Estate Management Hawaii Chapter No. 34	737-4000 (Oahu)	1136 12th Ave., Suite 220, Honolulu, HI 96816
SMCC — South Maui Condominium Council	879-2758 (Maui)	P.O. Box 647, Kihei, HI 96753
UH-SBMP — Small Business Management Program University of Hawaii	956-7363 (Oahu)	2404 Maile Way, Room A-202, Honolulu, HI 96822